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GOOGLE INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,  
  
Plaintiff,

v.

GOOGLE INC.,  
  
Defendant.

Case No. CV 10-03561 WHA

**JOINT STATEMENT REGARDING  
AGREED REVISIONS TO MODIFIED  
PROPOSED JURY INSTRUCTIONS ON  
FAIR USE (ECF NO. 1688)**

Dept. Courtroom 8, 19th Floor  
Judge: Hon. William Alsup

1 In its April 19 Modified Proposed Jury Instructions On Fair Use, ECF No. 1688, the Court  
2 directed the parties to meet and confer in person and try to agree on the Court's modified  
3 proposed fair use instructions and, if the parties could not agree, to state all objections in a brief.

4 As counsel reported during the pretrial conference on April 27, the parties have met and  
5 conferred in person, and have reached agreement on a number of changes to the Court's modified  
6 proposed instructions.

7 More specifically, the parties are in agreement that:

- 8 • The last sentence of Section 107 of the Copyright Act regarding unpublished works,  
9 which appears on page 3 at lines 9-10, should be deleted as unnecessary, as there are  
10 no issues in this case regarding unpublished works;
- 11 • The phrase "prove up," which appears on page 3 at line 13, should be changed to  
12 "prove";
- 13 • The phrase "and computer languages" in the first line of page 5 should be deleted;
- 14 • The sentence beginning on page 5, line 19, that begins with "In evaluating this" and  
15 refers to "component subroutines and subsubroutines" should be deleted;
- 16 • On page 6, following the first sentence of the paragraph that begins on line 5, the  
17 following sentence should be added:

18 Analysis of this factor is viewed in the context of Oracle's copyrighted works,  
19 namely Java 2 Standard Edition Versions 1.4 and 5.0, not Android.

- 20 • The parties are in agreement that the sentence that defines "work as a whole" starting  
21 on page 6, line 13 should be removed:

22 For purposes of this factor in our case, the "work as a whole" constitutes all of the  
23 compilable code associated with all of the 166 API packages (not just the 37) in  
the registered work, excluding the virtual machine.

24 The parties are continuing to discuss specific alternative language, and will advise the  
25 Court when they have reached agreement on that language.  
26  
27  
28

- On page 7, starting on line 6, the analogy regarding an anthology of photographs should be deleted in its entirety, i.e., the text beginning “For example” on line 6 through line 13 should be deleted.

Other than as stated above, the parties were unable to reach agreement regarding the modified instructions. Each party is therefore filing concurrently herewith a separate brief stating its objections to the modified instructions.

Dated: April 28, 2016

ORRICK, HERRINGTON &  
SUTCLIFFE LLP

By: /s/ Andrew D. Silverman

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ORACLE AMERICA, INC.

Dated: April 28, 2016

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By: /s/ Robert A. Van Nest

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GOOGLE INC.

**ATTESTATION OF CONCURRENCE**

I, Bruce W. Baber, the ECF user whose ID and password are being used to file this Joint Statement Regarding Agreed Revisions To Modified Proposed Jury Instructions On Fair Use (ECF No. 1688), hereby attest that Andrew D. Silverman, one of the attorneys for plaintiff Oracle America, Inc., concurs in this filing.

Dated: April 28, 2016

By: /s/ Bruce W. Baber  
BRUCE W. BABER